

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

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determination on a concern in connection with an 8(a) sole-source contract.

Appellant received the dismissal of its protest on July 27, 2005, and filed its appeal with this Office on August 11, 2005.

Appellant reasserts its contention that Manson will actually perform the contract. Appellant asserts that its protest was not over the joint venture's size, but because the awardee would not perform at least 40% of the contract, as required by regulation. Second, Appellant asserts its protest disclosed facts which the SBA officials who had standing to protest had a duty to investigate. Third, Appellant argues that standing at this Office is broader than at the protest level, and as a party adversely affected by the dismissal of its protest, it has standing to appeal.

ChibbCo/Lake Michigan JV did not file a response to this appeal.

II. DISCUSSION

Appellant filed the instant appeal within 15 days of receiving the size determination, and thus the appeal is timely. 13 C.F.R. § 134.304(a)(1).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the Area Office's dismissal of its size protest is based on a clear error of fact or law. 13 C.F.R. § 134.314; *Size Appeal of Procedyne Corp.*, SBA No. SIZ-4354, at 4-5 (1999).

The regulations governing the size determination program provide that only the following parties may make a request for a size determination in the case of 8(a) sole source awards:

- The 8(a) participant nominated for the award.
- The SBA program official with authority to execute the 8(a) contract, or, where applicable, the procuring agency contracting officer who has been delegated SBA's 8(a) contract execution functions.
- The SBA District Director in the district office that serves the participant.
- The Associate Administrator for 8(a) Business Development.

13 C.F.R. § 121.1001(b)(2)(ii).

Nowhere does the regulation give other potential offerors the right to file a size protest, as it does in the case of 8(a) competitive awards. *See* 13 C.F.R. § 121.1001(a)(2)(i). Therefore, it is clear that Appellant, as another potential offeror, had no standing to file a size protest, and the Area Office was correct to dismiss it. *Size Appeal of L. Washington & Associates, Inc.*, SBA No.

SIZ-4463, at 2 (2001).

Appellant's argument that it has standing to file this appeal is without merit. This Office has held that where a party with standing to request a size determination has done so, and an offeror in an 8(a) procurement is adversely affected by the size determination, that offeror may appeal that determination to this Office. *Size Appeal of Dynamic Decisions, Inc.*, SBA No. SIZ-4248, at 10 (1997). However, in this case, no party with standing has requested a size determination. Further, the determination being appealed was based on no error of law or fact, but on the plain language of the regulation. Therefore, even if Appellant had standing to appeal, as opposed to standing to protest, this Office must deny its appeal because the Area Office did not err in dismissing its protest due to a lack of standing.

Accordingly the Administrative Judge concludes that the Area Office properly dismissed Appellant's protest due to Appellant's lack of standing. As Appellant had no standing, its arguments on the merits need not be considered.

III. CONCLUSION

For the above reasons, the Administrative Judge AFFIRMS the Area Office's dismissal of the protest and DENIES the instant appeal.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge